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OMB CIRCULAR NO. A-129

POLICIES FOR FEDERAL CREDIT PROGRAMS AND NON-TAX RECEIVABLES

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CIRCULAR NO. A-129

Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for Federal Credit Programs and Non-Tax Receivables

Federal credit programs are created to accomplish a variety of social and economic goals. Agencies must implement budget policies and management practices that ensure that the goals of credit programs are met while properly identifying and controlling costs. In addition, Federal receivables, whether from credit programs or other non-tax sources, must be serviced and collected in an efficient and effective manner to protect the value of the Federal Government's assets.

GENERAL INFORMATION

1. Purpose. This Circular prescribes policies and procedures for

justifying, designing, and managing Federal credit programs and for collecting non-tax receivables. It sets principles for designing credit programs, including the preparation and review of legislation and regulations; budgeting for the costs of credit programs and minimizing unintended costs to the Government; and improving the efficiency and effectiveness of Federal credit programs. It also sets standards for extending credit, managing lenders participating in the Government's guaranteed loan programs, servicing credit and non-tax receivables, and collecting delinquent debt.

2. Authority. This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; Section 2653 of Public Law 98-369; the Federal Credit Reform Act of 1990; the Federal Debt Collection Procedures Act of 1990; the Chief Financial Officers Act of 1990; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and pre-existing common law authority to charge interest on debts and to offset debts administratively.

3. Coverage.

a. Applicability. The provisions of this Circular apply to all credit programs of the Federal Government, including:

(1) Direct loan programs;

(2) Guaranteed loan programs and loan insurance programs in which the Federal Government bears a legal liability to pay for all or part of the principal or interest in the event of borrower default; and

(3) Loans or other financial assets acquired by a Federal agency (or a receiver or conservator acting for a Federal agency) as a result of a claim payment on a defaulted guaranteed or insured loan or in fulfillment of a Federal deposit insurance commitment.

Sections IV and V of Appendix A (Managing the Federal Government's Receivables and Delinquent Debt Collection) also apply to receivables due to the Government from the sale of goods and services; fines, fees, duties, leases, rents, royalties, and penalties; overpayments to beneficiaries, grantees, contractors, and Federal employees; and similar debts.

b. Exclusions Under the Debt Collection Act. Certain debt collection techniques authorized by the Debt Collection Act of 1982, as amended, may not be applied to debts arising under the Internal Revenue Code, the Social Security Act, or the tariff laws of the United States, or to debts owed to the United States Government by State or local governments.

c. Other Statutory Exclusions. The policies and standards of this Circular do not apply when statutorily prohibited or inconsistent with statutory requirements. However, agencies are required to review periodically legislation affecting the form of assistance and/or financial standards for credit programs and justify continuance of any non-conformance (see section II.5.c).

4. Rescissions. This Circular rescinds and replaces OMB Circular No. A-70, dated August 24, 1984, OMB Circular No. A-129, dated November 25, 1988, and OMB Bulletin No. 91-05, dated November 26, 1990.

The Circular supplements, and does not supersede, the requirements applicable to budget submissions under Circular No. A-11 and to proposed legislation and testimony under Circular No. A-19.

5. Effective Date. This Circular is effective immediately.

6. Inquiries. Further information on estimating credit subsidies may be found in Appendix D to OMB Circular No. A-11. Further information on the implementation of credit management and debt collection policies may be found in the credit supplement to the Treasury Financial Manual (TFM) and in OMB's government-wide 5-year plan for financial management submitted annually to Congress.

For inquiries concerning budget and legislative policy for credit programs (Appendix A, section II), contact the Office of Management and Budget, Budget Analysis Branch, Room 6025, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, 202/395-3930. For inquiries concerning credit management and debt collection policies (Appendix A, sections III - V), contact the Office of Management and Budget, Credit and Cash Management Branch, Room 10236, New

Executive Office Building, 725 17th Street, NW, Washington, DC 20503, 202/395-3066.

7. Definitions. Key terms used in this Circular are defined in OMB Circulars No. A-11 and A-34.

Richard Darman

Director

Appendices (3)

Appendix A to Circular No. A-129

I. RESPONSIBILITIES OF DEPARTMENTS AND AGENCIES

1. Office of Management and Budget. The Office of Management and Budget (OMB) is responsible for reviewing legislation to establish new credit programs or to expand or modify existing credit programs; reviewing and clearing testimony pertaining to credit programs and debt collection; reviewing agency budget submissions for credit programs and debt collection activities; formulating and reviewing credit management and debt collection policy; and approving agency credit management and debt collection plans.

2. Department of the Treasury. The Department of the Treasury, through its Financial Management Service (FMS), is responsible for monitoring and facilitating implementation of credit management and debt collection policy. FMS develops and disseminates as a supplement to the Treasury Financial Manual operational guidelines for agency compliance with government-wide credit management and debt collection policy. FMS assists agencies in improving credit management activities and evaluates innovative credit management practices.

3. Federal Credit Policy Working Group. The Federal Credit Policy Working Group is an inter-agency forum which provides advice and assistance to OMB and Treasury in the formulation and implementation of credit policy. Membership consists of representatives from the Executive Office of the President, the Council of Economic Advisers, the Office of Management and Budget, and the Department of the Treasury. The major credit and debt collection agencies represented include the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Veterans Affairs, the Agency for International Development, the Export-Import Bank, the Resolution Trust Corporation, and the Small Business Administration. Other departments and agencies may be invited to participate on the Working Group at the request of the Chairperson. The Director of OMB designates the Chairperson of the Group.

4. Departments and Agencies. Departments and agencies shall manage credit programs and all non-tax receivables in accordance with their statutory authorities and the provisions of this Circular to protect the Government's assets, and to minimize losses in relation to social benefits provided.

a. Agencies shall ensure that:

(1) Federal credit program legislation, regulations, and policies are designed and administered in compliance with the principles of this Circular;

(2) The costs of credit programs covered by the Federal Credit Reform Act of 1990 are budgeted for and controlled in accordance with the principles of the Act (the Act exempts deposit insurance agencies, Tennessee Valley Authority, Pension Benefit Guaranty Corporation, and certain other activities from credit reform requirements);

(3) Every effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determination of credit worthiness;

(4) Lenders participating in guaranteed loan programs meet all applicable financial and programmatic requirements;

(5) Informed and cost-effective decisions are made concerning portfolio management, including full consideration of contracting out for servicing or selling the portfolio and transferring servicing to the private sector;

(6) The full range of available techniques are used, as appropriate, to collect delinquent debts, including administrative offset, salary offset, tax refund offset, private collection agencies, and litigation;

(7) Delinquent debts are written off as soon as they are determined to be uncollectible; and

(8) Timely and accurate financial management and performance data are submitted to OMB and the Department of the Treasury so that the Government's credit management and debt collection programs and policies can be evaluated.

b. In achieving these objectives, agencies shall:

(1) Establish, as appropriate, boards to coordinate

credit management and debt collection activities and to ensure full consideration of credit management and debt collection issues by all interested and affected organizations. Representation should include, but not be limited to, the agency Chief Financial Officer (CFO) and the senior official(s) for program offices with credit activities or non-tax receivables. The Board may seek from the agency's Inspector General input based on findings and conclusions from past audits and investigations;

(2) Ensure that the standards set forth in this Circular and supplementary guidance set forth in the Treasury Financial Manual are incorporated into agency regulations and procedures for credit programs and debt collection activities;

(3) Propose new or revised legislation, regulations, and forms as necessary to ensure consistency with the provisions of this Circular;

(4) Submit legislation and testimony affecting credit

programs for review under the OMB Circular No. A-19 legislative clearance process, and budget proposals for review under the Circular No. A-11 budget justification process;

(5) Periodically evaluate Federal credit programs to assess their effectiveness in achieving program goals;

(6) Assign to the agency CFO, in accordance with the Chief Financial Officers Act of 1990, responsibility for directing, managing, and providing policy guidance and oversight of agency financial management personnel, activities, and operations, including the implementation of asset management systems for credit management and debt collection;

(7) Prepare, as part of the agency CFO Financial Management 5-Year Plan, a Credit Management and Debt Collection Plan for effectively managing credit extension, account servicing and portfolio management, and delinquent debt collection. The plan must ensure agency compliance with the

standards in this Circular;

(8) Ensure that data in loan applications and documents for individuals are managed in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (the Privacy Act does not apply to loans and debts of commercial organizations); and the Right to Financial Privacy Act; and

(9) Include in personnel evaluation criteria for senior executives with major credit management and debt collection responsibilities performance standards in support of this Circular.

II. BUDGET AND LEGISLATIVE POLICY FOR CREDIT PROGRAMS

Federal credit assistance should be provided only when it is necessary and the best means to achieve clearly specified Federal objectives. Use of private credit markets should be encouraged, and any impairment of such markets or misallocation of the Nation's resources through the operation of Federal credit programs should be minimized.

1. Program Justification. New programs and proposals for reauthorizing, expanding, or significantly increasing funding for credit programs should be accompanied by analysis which:

    a. Clearly defines the Federal objectives to be achieved, and demonstrates why they cannot be achieved with private credit assistance, including:

        (1) A description of existing and potential private sources of credit by type of institution and the availability and cost of credit to borrowers; and

        (2) An explanation as to whether, and why, these private sources of financing and their terms and conditions must be supplemented and subsidized;

    b. Specifies whether the credit program is intended to:

        (1) Correct a capital market imperfection, which should be defined; and/or

        (2) Subsidize borrowers or other beneficiaries, who

should be identified, or encourage certain activities, which should be specified;

c. Explains why a credit subsidy is the most efficient way of providing assistance, including how it provides assistance in overcoming market imperfections, and/or would redress the specific inadequate financing cited;

d. Estimates or, when the program exists, measures the benefits expected from the program, including the amount by which the distribution of credit is expected to be altered and the favored activity is expected to increase. Information on conducting a cost-benefit analysis can be found in OMB Circular No. A-94;

e. Estimates the extent to which the program substitutes directly or indirectly for private lending, and analyzes any elements of program design that encourage and supplement private lending activity, with the objective that private lending is displaced to the smallest degree possible by agency programs; and

f. Provides an explicit estimate of the subsidy, as required by the Federal Credit Reform Act of 1990, and an estimate of the expected annual administrative costs (including extension, servicing, and collection) of the credit program. If loan assets are to be sold or are to be included in a prepayment program for programmatic or other reasons, the sale/prepayment is classified as a modification under the Federal Credit Reform Act. The cost of this modification requires budget authority, which must be appropriated or otherwise made available. Loan asset sales/prepayment programs must be conducted in accordance with policies in this Circular and procedures in the credit supplement to the Treasury Financial Manual, including the prohibitions against the financing of prepayments by tax-exempt borrowing and sales with recourse except where specifically authorized by statute. The cost of any guarantee placed on the asset sold requires budget authority.

2. Form of Assistance. When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan

guarantee.

a. Loan guarantees, by removing part or all of the credit risk of a transaction, change the allocation of economic resources. Loan guarantees may make credit available when private financial sources would not otherwise do so, or they may allocate credit to borrowers under more favorable terms than would otherwise be granted. This reallocation of credit may impose a cost on the Government and/or the economy.

b. Direct loans usually offer borrowers lower interest rates and longer maturities than loans available from private financial sources, even those with a Federal guarantee. The use of direct loans, however, may displace private financial sources and increase the possibility that the terms and conditions on which Federal credit assistance is offered will not reflect changes in financial market conditions. The costs on the Government and the economy are therefore likely to be greater.

c. Direct or indirect guarantees of tax-exempt obligations are expressly prohibited under Section 149(b) of the

Internal Revenue Code. Guarantees of tax-exempt obligations are an inefficient way of allocating Federal credit. Assistance to the borrower, through the tax exemption and the guarantee, provides interest savings to the borrower that are smaller than the tax revenue loss to the Government. Thus, the cost to the taxpayer is greater than the benefit to the borrower.

d. To preclude the possibility that Federal agencies will guarantee tax-exempt obligations, either directly or indirectly, agencies will: (1) not guarantee federally tax-exempt obligations; (2) not subordinate direct loans to tax-exempt obligations; (3) provide that effective subordination of a guaranteed loan to tax-exempt obligations will render the guarantee void; (4) prohibit use of a Federal guarantee as collateral to secure a tax-exempt obligation; (5) prohibit Federal guarantees of loans funded by tax-exempt obligations; and (6) prohibit the linkage of Federal guarantees with tax-exempt obligations.

e. Where a large degree of subsidy is justified, comparable to that which would be provided by guaranteed tax-exempt obligations, agencies should consider the use of direct loans.

3. Financial Standards. In accordance with the Federal Credit Reform Act of 1990, agencies must analyze and control the risk and cost of their programs. Agencies must develop statistical models predictive of defaults and other deviations from loan contracts. Agencies are required to estimate subsidy costs and to obtain budget authority to cover such costs before obligating direct loans and committing loan guarantees. Specific instructions for budget justification under the Act are provided in OMB Circular No. A-11, and instructions for budget execution are provided in OMB Circular No. A-34.

Agencies shall follow sound financial practices in the design and administration of their credit programs. Where program objectives cannot be achieved while following sound financial practices, the cost of these deviations shall be justified in agency budget submissions in comparison with expected benefits. Unless a waiver is approved, agencies should follow the financial practices discussed below.

a. Lenders and borrowers who participate in Federal credit programs should have a substantial stake in full repayment in accordance with the loan contract.

(1) Private lenders who extend credit that is guaranteed by the Government should bear at least 20 percent of the loss from a default. Loan guarantees that cover 100 percent of the credit risk encourage private lenders to exercise less caution than they otherwise would in evaluating loan requests. The level of guarantee should be no more than necessary to achieve program purposes. Loans for borrowers who are deemed to pose less of a risk should receive a lower guarantee.

(2) Borrowers should have an equity interest in any asset being financed with the credit assistance, and business borrowers should have substantial capital or equity at risk in their business (see section III.A.3.(b) for additional discussion).

b. Interest and fees on direct loans and fees on loan guarantees should be set by reference to the cost to the Government of making the direct loan or loan guarantee and should be reviewed at least annually.

(1) These charges shall be at levels sufficiently high to cover the Government's total cost of making the loan or guarantee, including administrative costs (extension, servicing, and collection), and default and other subsidy costs.

(2) When charging interest and/or fees at such levels is statutorily prohibited or an agency considers it inconsistent with program objectives, the difference should be justified in relation to benefits. In addition, the agency must request an appropriation in accordance with the Federal Credit Reform Act of 1990 for default and other subsidy costs not covered by interest and fees.

(3) Riskier borrowers should be charged more than those who pose less risk in order to encourage such borrowers to take actions to reduce the risk they pose to the Government.

c. Contractual agreements should include all covenants and restrictions (e.g., liability insurance) necessary to protect the Federal Government's interest.

(1) Maturities on loans should be shorter than the estimated useful economic life of any assets financed.

(2) The Government's claims on assets should not be subordinated to the claims of other lenders in the case of a borrower's default on either a direct loan or a guaranteed loan. Subordination increases the risk of loss to the Government, since other creditors would have first claim on the borrower's assets.

d. In order to minimize inadvertent changes in the amount of subsidy, interest rates to be charged on direct loans and any interest supplements for guaranteed loans should be specified by reference to the market rate on a benchmark Treasury security rather than as an absolute level. A specific level of interest rate should not be cited in legislation or in regulation because such a rate could soon become outdated, unintentionally changing the extent of the subsidy.

(1) The benchmark financial market instrument should be a marketable Treasury security with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. When the rate on the Government loan is intended to be different than the benchmark rate, it should be stated as a percentage of that rate. The benchmark Treasury security must be cited specifically in agency budget justifications.

(2) Interest rates applicable to new loans should be reviewed at least quarterly and adjusted to reflect changes in the benchmark interest rate. Loan contracts may provide for either fixed or floating interest rates.

e. Maximum amounts of direct loan obligations and loan guarantee commitments must be specifically authorized in advance in annual appropriations acts, except for mandatory programs exempt from the appropriations requirements under section 504(c) of the Federal Credit

Reform Act of 1990.

f. Financing for Federal credit programs should be provided by Treasury in accordance with the Federal Credit Reform Act of 1990. Guarantees of the timely payment of 100 percent of the loan principal and interest against all risk create a debt obligation that is the credit risk equivalent of a Treasury security. Accordingly, a Federal agency other than the Department of the Treasury may not issue, sell, or guarantee an obligation of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, unless the terms of the obligation provide that it may not be held by a person or entity other than the Federal Financing Bank (FFB) or another Federal agency. The Secretary of the Treasury may waive this requirement with respect to obligations that the Secretary determines: (1) are not suitable for investments for the FFB because of the risks entailed in such obligations; or (2) are or will be financed in a manner that is least disruptive of private financial markets and institutions. The benefits of using the FFB must not expand the degree of subsidy.

g. Loan contracts should be standardized where practicable. Private sector documents should be used whenever possible, especially for loan guarantees.

5. Implementation. The provisions of this section II will be implemented through the OMB Circular No. A-19 legislative review process and the OMB Circular No. A-11 budget justification and submission process.

a. Proposed legislation on credit programs, reviews of credit proposals made by others, and testimony on credit activities submitted by agencies under the OMB Circular No. A-19 legislative review process should conform to the provisions of this Circular.

Whenever agencies propose provisions or language not in conformity with the policies of this Circular, they will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time in order to allow for an evaluation by OMB.

b. OMB will, upon written request, provide technical advice on proposed credit program provisions that would be exceptions to the standards prescribed in this section II. This will avoid delays and help to ensure consistency with Federal credit policies.

A checklist for reviews of legislative and budgetary proposals is included as Appendix B to this Circular. Model bill language that agencies may use in developing and reviewing legislation is provided in Appendix C.

c. Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission (required by OMB Circular No. A-11, Section 15.2) should include:

(1) A plan for periodic, results-oriented evaluations of the effectiveness of the program, and the use of relevant program evaluations and/or other analyses of program effectiveness or causes of escalating

program costs. A program evaluation is a formal assessment, through objective measurement and systematic analysis, addressing the manner and extent to which credit programs achieve intended objectives;

(2) A review of the changes in financial markets and the status of borrowers and beneficiaries to verify that continuation of the credit program is required to meet Federal objectives, to update its justification, and to recommend changes in its design and operation to improve efficiency and effectiveness; and

(3) Proposed changes to correct those cases where existing legislation, regulations, or program policies are not in conformity with the policies of this section II. When an agency does not deem a change in existing legislation, regulations, or program policies to be desirable, it will provide a justification for retaining the non-conformance.

III. CREDIT MANAGEMENT AND EXTENSION POLICY

A. CREDIT EXTENSION POLICIES.

1. Applicant Screening.

a. Program Eligibility. Agencies, including private lenders in guaranteed loan programs, shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance. If it is consistent with program objectives, borrowers should be required to certify and document that they have been unable to obtain credit from private sources. In addition, application forms must require the borrower to certify the accuracy of information being provided (false information is subject to penalties under 18 U.S.C. 1001).

b. Delinquency on Federal Debt. Agencies shall determine whether applicants are delinquent on any Federal debt, including tax debt. Agencies must include a question on loan application forms asking applicants if they have such delinquencies. In addition, agencies, including guaranteed loan lenders, shall use the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS) to identify delinquencies on Federal debt. CAIVRS offers direct on-line access for mortgage lenders to verify whether candidates for Federal Housing Administration (FHA) loans have any previous FHA loan defaults. The CAIVRS data base has been expanded to include delinquent debt from other major credit programs. Other delinquent receivables, including judgment liens against property for debt owed to the United States, tax debt, and corporate debt may also be added to the data base. All credit programs should use CAIVRS for loan screening to ensure applicants are not delinquent on Federal debt.

Processing of applications should be suspended when applicants are delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government. (This provision does not apply to entitlement awards.) Processing may continue only when the debtor satisfactorily resolves the debt (e.g., pays in full or negotiates a new repayment plan).

c. Credit Worthiness. Where credit worthiness is a criterion for loan approval, agencies/private lenders shall determine that applicants have the ability to repay the loan, as well as a satisfactory history of repaying debt. Credit reports and supplementary data sources, such as financial statements and tax returns, should be used to verify or determine employment, income, held assets, and credit history.

2. Loan Documentation. Loan origination files should contain loan applications, credit bureau reports, credit analyses, loan contracts, and other documents necessary to conform to private sector standards for that type of loan. Accurate and complete documentation is critical to providing proper servicing to the debtor, pursuing collection of delinquent debt, and, in the case of guaranteed loans, claims payment. Additional information on documentation requirements is available in the credit supplement to the Treasury Financial Manual.

3. Collateral Requirements. For many types of loans, the Government can reduce its default risk and potential losses through well-managed collateral requirements.

a. Appraisals of Real Property. Appraisals of real property serving as collateral for a direct or guaranteed loan must be conducted in accordance with the following guidelines:

(1) Agencies shall require that all appraisals be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Agencies shall prescribe additional appraisal standards as appropriate.

(2) Agencies shall ensure that all credit transactions over $100,000 have an appraisal prepared by a State licensed or certified appraiser (except refinancings with no cash out and those transactions where the collateral is not a major factor in the decision to extend credit). Agencies shall determine which of these transactions, because of size and/or complexity, must be performed by a State certified appraiser. Agencies may also designate direct or guaranteed loans transactions under $100,000 that require the services of a licensed or certified

appraiser.

b. Loan-to-Value Ratios. In some credit programs, the primary purpose of the loan is to finance the acquisition of an asset, such as a single family home, which then serves as collateral for the loan. Agencies should ensure that borrowers assume an equity interest in such assets in order to reduce defaults and Government losses. Federal agencies should explicitly define the components of the loan-to-value (LTV) ratio for both direct and guaranteed loan programs. Financing should be limited by not offering terms (including the financing of closing costs) that result in a loan-to-value ratio equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral.

c. Liquidation of Real Property Collateral for Guaranteed Loans. In general, it is not in the Federal Government's financial interest to assume the responsibility for managing and disposing of real property serving as collateral on defaulted guaranteed loans. Private lenders should be required to liquidate, through litigation if necessary, any real property collateral for a defaulted guaranteed loan before filing a default claim with the guarantor.

d. Asset Management Standards and Systems. Agencies should establish asset management standards and systems for real property acquired as a result of direct or guaranteed loan defaults. Agencies should establish policies and procedures for the acquisition, management, and disposal of such property. Inventory management systems should be established to track all costs, including contractual costs, of maintaining and selling property. Inventory management systems should also generate management reports, provide controls and monitoring capabilities, and summarize information for the Office and Management and Budget and the Department of the Treasury.

B. MANAGEMENT OF GUARANTEED LOAN LENDERS AND SERVICERS

1. Lender Eligibility.

a. Participation Criteria. Agencies should establish and publish in the Federal Register specific eligibility criteria for lender participation in Federal guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;

(2) Qualification requirements for principal officers and staff of the lender;

(3) Where appropriate for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs, fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee; and

(4) For lenders not regulated by a Federal financial institutions regulatory agency, financial and capital requirements, including minimum net worth requirements based on business volume.

b. Review of Eligibility. Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

c. Fees. When authorized to do so, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

d. Decertification. Agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

(1) Significant and/or continuing non-conformance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility.

e. Loan Servicers. Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. Lender Agreements. Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards, and other applicable

requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender's eligibility for continued participation in the program.

a. General Participation Requirements. Lender agreements should include:

(1) Requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see section 1., above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see section II.3.a.(1)); and, where feasible,

(3) Maximum delinquency, default, and claim rates for lenders, taking into account individual program characteristics.

b. Performance Standards. Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures, and litigation to enforce loan contracts. Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claims payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. Reporting Requirements. Credit agencies require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance, and satisfy OMB, Treasury, and other reporting requirements. Examples of these data include:

(1) Activity Indicators -- number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of the risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) Status Indicators -- a schedule showing the number and amount of past due loans by "age" of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should identify needed information to be provided on a quarterly basis (or other reporting period based on the level of lending and payment activity).

d. Loan Servicers. Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

3. Lender and Servicer Reviews. To evaluate and enforce lender and servicer performance, agencies should conduct on-site

reviews. Agencies should summarize review findings in written reports with recommended corrective actions and submit them to agency review boards (see section I.4.b.1).

Reviews should be conducted biennially where possible; however, agencies should conduct annual on-site reviews for all lenders and servicers with substantial loan volume or whose:

a. Financial performance measures indicate a deterioration in their guaranteed loan portfolios;

b. Portfolio has a high level of defaults for guaranteed loans less than one year old;

c. Overall default rates rise above acceptable levels; and/or

d. Poor performance results in monetary penalties or an abnormally high number of reduced or rejected claims.

Agencies are encouraged to develop a lender/servicer classification system which assigns a risk rating based on the above factors. This risk rating can be used to establish priorities for on-site reviews and monitor the effectiveness of corrective actions.

Reviews should be conducted by special agency program compliance staff, Inspector General staff, and/or independent auditors. Where possible, agencies with similar programs should coordinate their reviews to minimize the burden on lenders/servicers and maximize use of scarce resources. Agencies should also utilize the monitoring efforts of GSEs and similar organizations for guaranteed loans that have been "pooled."

4. Corrective Actions. If a review indicates that the lender/servicer is not in conformance with all program requirements, agencies should determine the seriousness of the problem. For minor non-compliances, agencies and the lender or servicer should agree on corrective actions. However, agencies should establish penalties for more serious and frequent offenses. Penalties may include loss of guarantees, reprimands, probation, suspension, and decertification.

IV. MANAGING THE FEDERAL GOVERNMENT'S RECEIVABLES

The Government must service and collect debts, including defaulted guaranteed loans acquired by the Government, in a manner that best protects the value of the Government's assets. Mechanisms must be in place to collect and record payments and provide accounting and management information for effective stewardship. These servicing activities can be carried out by the agency, or obtained through a cross-servicing arrangement with another agency or a contract with a private sector firm. Under certain conditions, it may be advantageous to sell loans or other debts and transfer servicing and collection responsibilities to the private sector.

1. Accounting and Financial Reporting.

a. Accounting and Financial Reporting Systems. Agencies shall establish accounting and financial reporting systems to meet the standards provided in this Circular, OMB Circular No. A-127, "Financial Management Systems," and other government-wide requirements. These systems shall be capable of accounting for obligations and outlays and of meeting the reporting requirements of OMB and Treasury, including those associated with the Federal Credit Reform Act and the Chief Financial Officers Act.

b. Agency Reports. Comprehensive reports on the status of loan portfolios and receivables shall be used to evaluate management effectiveness. Agencies shall prepare, in accordance with the CFOs Act and OMB guidance, annual financial statements which include loan programs and other receivables. The Office of Inspector General or an independent external auditor should audit agency financial statements annually.

Agency reports and financial statements shall be consistent or reconcilable with amounts reported in the agency's budget submission to OMB and in Treasury SF 220-8, "Report on Guaranteed Loans," and SF 220-9, "Report on Accounts and Loans Receivable Due from the Public."

2. Loan Servicing Requirements. Agency servicing requirements, whether performed in-house or obtained from another agency or private sector firm, must meet the standards described below.

a. Documentation. Approved loan files (or other systems of records) shall contain adequate and up-to-date information reflecting terms and conditions of the loan, payment history, including occurrences of delinquencies and defaults, and any subsequent loan actions which result in payment deferrals, refinancing, or rescheduling.

b. Billing and Collections. Agencies shall ensure that there is routine invoicing of payments, and that efficient mechanisms are in place to collect and record payments. Where appropriate, borrowers should be encouraged to use pre-authorized debits when making payments.

c. Escrow Accounts. Agency servicing systems must process tax and insurance deposits and payments for housing and other long-term real estate loans through an escrow account. These systems must also be capable of analyzing escrow balances to adjust required deposit amounts in order to prevent deficiencies.

d. Referring Account Information to Credit Reporting

Agencies. Agency servicing systems must be able to identify and refer debts to credit bureaus in accordance with the Debt Collection Act of 1982, as amended. Agencies shall refer to credit bureaus:

(1) All non-tariff and non-tax consumer accounts with delinquent payments in excess of $100; and

(2) All commercial accounts (current and delinquent) in excess of $100.

3. Loan Asset Sales and Prepayment Programs.

a. Loan Asset Sales Programs. Loan asset sales may be undertaken to:

(1) Improve Credit Management. Improvement in the management and performance of loan portfolios, including better loan origination, documentation, and servicing; and

(2) Realize Administrative Savings. Net reduction of agency resource needs by transferring servicing and

collection functions to the private sector.

b. Prepayment Programs. Agencies shall initiate prepayment programs when statutorily mandated. Other prepayment programs may not be initiated without the approval of OMB and Treasury. Delinquent borrowers may participate in a prepayment program only if past due principal, interest, and charges are paid in full prior to their request to prepay the balance owed.

c. Financial Advisor. A financial advisor shall be engaged by the agency to conduct a portfolio valuation and compare pricing options for a prepayment program or loan asset sale. Based on the financial advisor's report, the agency shall develop a schedule and plan, which must include an analysis of the pricing option selected. The pricing option must be carefully selected to avoid undue cost to the Government or additional subsidy to the borrower. Any additional subsidy will require budget authority, which must be appropriated or otherwise made available. Prior to proceeding with the sale, agencies shall submit their plan and proposed pricing option to OMB and Treasury for review and approval.

d. Loan Asset Sales Guidelines. Guidelines for loan asset sales and prepayment programs have been established to ensure that agencies meet the policy requirements of this Circular (see the credit supplement to the Treasury Financial Manual). The agency shall consult with OMB and Treasury throughout the sales/prepayment process to ensure consistency with policy and guidelines.

V. DELINQUENT DEBT COLLECTION

Agencies shall have a fair but aggressive program to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each agency will establish a collection strategy consistent with its statutory authority that seeks to return the debtor to a current payment status or, failing that, maximize collections on the debt.

1. Standards for Defining Delinquent and Defaulted Debt.

a. Direct Loans. Agencies shall consider a direct loan account to be delinquent when an agreed-upon payment is not paid by the due date, or by the end of any "grace period" established in the loan agreement.

b. Guaranteed Loans. Loans guaranteed or insured by the Federal Government are in default when the borrower breaches the loan agreement with the private sector lender. It becomes a default to the Federal Government when the guaranteeing Federal agency repurchases the loan or pays reinsurance on the loan. The repurchased default becomes a receivable and is subject to the debt collection provisions of this Circular.

c. Other Debt. Overpayments to contractors, grantees, employees, and beneficiaries; fines; penalties; and other debts are delinquent when the debtor does not pay or resolve the debt within 30 days of the due date or 30 days after the notification of the debt is mailed to the debtor, and has elected not to exercise any available appeals or has exhausted all agency appeal processes.

2. Collection Strategy for Delinquent Debt. Agencies shall establish an accurate and timely reporting system to notify collection staff when a receivable becomes delinquent. Each

agency shall develop a systematic process for the collection of identified delinquent accounts. Collection strategies should take advantage of the full range of available techniques while recognizing program needs and statutory authority.

3. Collection Techniques.

a. Dunning Procedures. As soon as an account becomes delinquent, dunning notices or demand letters should be sent to the debtor. The number and frequency of such letters will vary by size, type, and age of debt. These letters should incorporate, as appropriate, due process notices for referring delinquent accounts to credit reporting agencies, initiating Federal salary offset, referring accounts to the Internal Revenue Service for tax refund offset, and referring debt to legal counsel for litigation.

Agencies are also encouraged to contact the debtor in person or by telephone where such action would facilitate determination of the cause of the delinquency and return of the account to a current status.

b. Rescheduling Debt. Rescheduling changes the original terms of the debt to provide a repayment plan that reflects the borrower's current financial position. Agencies shall permit rescheduling of payments only when it is in the best interest of the Government and the agency has determined that recovery of all or a portion of the amount owed is reasonably assured. Loan modifications with additional cost to the Government not included in the original subsidy estimate will require additional budget authority.

c. Administrative Offset. Agencies may collect delinquent debt by offsetting payments due to the debtor under other Federal loans, grants, contracts, or payments. Offsets can be applied by the agency owed the delinquent debt, or by other agencies upon request of the agency to which the delinquent debt is owed.

(1) Agencies shall implement administrative offset in accordance with the Federal Claims Collection Standards, 4 CFR 102.3-4, and Federal Acquisition

Regulations (FAR), Subpart 32.6. Administrative offset against State and local governments is permitted under common law.

(2) Agencies may not attempt to offset a contract if the contract is being adjudicated under the Contract Disputes Act (CDA) or Federal Acquisition Regulations, Subpart 32.6. Once such a contract has been adjudicated, then offsets under the Debt Collection Act may be initiated for any balance of funds still owed the contractor. This does not preclude an agency from offsetting non-disputed contracts of the contractor involved.

(3) Grants, cooperative agreements, or contracts which are paid in advance (e.g., payment is made in advance of performance or before costs are incurred) generally are not subject to offset because:

(a) Such payments do not constitute a "Government debt"; and

(b) Offsets could have the effect of defeating or interfering with the purposes of the payment.

(4) Offsets may be attempted where funds are paid out to the recipient on a reimbursement basis and the recipient has already satisfied the program requirements. Reimbursable payments due may be offset because they clearly represent a Government debt, at least to the extent of the particular reimbursement. Agencies may consider converting a problem recipient with a history of poor performance to reimbursable payments in anticipation of a future need to effect an offset.

d. Collection Agencies.

(1) All accounts that are six months or more past due must be turned over to a collection contractor unless the accounts are eligible for the Federal salary or administrative offset programs, or are in litigation. However, agencies are encouraged to use collection agencies at any time after the account (including guaranteed loans acquired by the Federal Government) becomes delinquent.

(2) The cost of collection contractor fees will be added to the amount of the debt. Actual fees paid to a collection contractor will be based on the amount collected, if any.

e. Federal Employee Salary Offset. The salaries of Federal employees who are delinquent on debts to the Government (including individuals who are personally liable for the debts of partnerships and corporations, and who can be identified by SSN) may be offset to recover the amount owed. Agencies shall make arrangements for annual matching of their delinquent debtor files against the employment rosters maintained by the Office of Personnel Management, the Department of Defense, and other Federal employers, such as the legislative and judicial branches. Employees who do not repay in full, enter into repayment agreements, or otherwise resolve delinquent debts after notification, will have their salaries offset.

(1) Under the Debt Collection Act of 1982, as amended, up to 15 percent of an employee's disposable pay may be offset each pay period.

(2) Agencies have the option of referring delinquent accounts of Federal employees to the Department of Justice to effect offset on a default judgment in accordance with section 124 of P.L. 97-276. This provision allows collection of 25 percent of salary after a judgment is obtained.

f. Tax Refund Offset. Tax refund offset authority requires agencies to recover delinquent debt by offsetting tax refunds due the delinquent debtor (either individuals or corporations). Delinquent debtors will be notified of the planned referral of their accounts to the IRS and be given the opportunity to dispute or resolve the debt. All delinquent accounts not resolved must be referred annually to the IRS for tax refund offset in accordance with guidance provided by OMB and the Department of the Treasury.

g. Referral for Litigation. Agencies shall refer delinquent accounts to the Department of Justice, or use other litigation authority that may be available, as soon as there is sufficient reason to conclude that full or partial recovery of the debt can best be achieved through litigation. Referrals to Justice should be made in accordance with the Federal Claims Collections Standards. If the debtor does not come forward with a voluntary payment after the claim has been referred for litigation, a suit shall promptly be initiated.

(1) In consultation with the Department of Justice, agencies shall establish a system to account for:

(a) claims referred to Justice; and

(b) claims closed by Justice and returned to agencies.

(2) Agencies shall accelerate claim referrals to the Department of Justice in those districts where the Department contracts with private law firms for debt collection.

4. Interest, Penalties, and Administrative Costs.

a. Policy. Except where applicable statutes, regulations, loan agreements, or contracts prohibit or explicitly set such charges (and certain other exemptions under 4 CFR 102), agencies shall:

(1) Assess interest, penalties, and administrative costs on outstanding delinquent debt in accordance with 4 CFR 102, including a notification procedure to inform debtors of impending charges; and

(2) Calculate interest and penalty charges against the total liability to the Federal Government incurred through the delinquency. Agencies may apply interest to unpaid interest, penalties, and administrative charges, if any, when these costs have been added to the loan principal under a rescheduling agreement.

b. Interest.

(1) Interest shall accrue from the date on which notice of the debt and interest charges is mailed or delivered to the debtor. The minimum annual rate of interest that agencies shall charge is the current cost of funds to the U.S. Treasury.

(2) Agencies must adjust the interest rate on delinquent debt to conform with the rate established by a U.S. Court when a judgment has been obtained.

c. Penalties. Agencies shall assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is delinquent.

d. Administrative Costs.

(1) Administrative costs include both the direct and indirect costs incurred in collecting debts from the time they become delinquent until the time collections are made or agency collection efforts cease. There is no statutory authority to recover costs incurred prior to an account becoming delinquent. Calculation of administrative costs should be based on actual costs incurred or upon an analysis establishing an average of additional costs incurred by the agency.

(2) For those accounts that are successfully litigated, costs to litigate the case by the Department of

Justice will be determined by the courts at the time of judgment and added to the judgment amount.

5. Write-Off and Close-Out Procedures. Effective write-off and close-out procedures ensure proper accounting for the costs of credit programs, and allow management to focus its efforts on delinquent accounts with the greatest potential for collection. Agencies shall develop a two-step process that:

(1) Identifies and removes uncollectible accounts from the active portfolio through write-off, although collection efforts may continue (individual write-offs greater than $100,000 require approval of the Department of Justice); and

(2) Establishes close-out procedures that result in the termination of all collection activity and elimination of the accounts from all further servicing. Agencies shall report closed out accounts over $600 to the IRS as taxable income (Form 1099-G). Amounts less than $600 may be reported at an agency's discretion.

Appendix B to Circular No. A-129

Checklist for Credit Program Legislation, Testimony, and Budget Submissions

The following checklist provides guidelines to be followed in reviewing credit program legislation, testimony, and budget submissions.

The checklist is to be used by agencies and OMB in proposing legislation, reviewing credit proposals, and preparing testimony on credit activities. If the proposed provisions or language are not in conformity with the policies of this Circular as listed in these checklists, agencies will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time, in order to allow for continuing review by OMB.

Agencies are to use the checklist in the budget submission process for the evaluation of existing legislation, regulations, or program policies. The OMB budget examiner with primary responsibility for the credit account will determine the use of this checklist. Use of the list includes review of changes in financial markets and the status of borrowers and beneficiaries to ensure that Federal objectives require continuation of the credit program. If these policies are found to be not in conformity with the policies of this Circular, agencies will propose changes to correct the inconsistency in their annual budget submission and justification to OMB and the Congress. When an agency does not deem a change in existing legislation, regulations, or policies to be desirable, it will provide a justification for retaining the existing non-conforming legislation or policies in its budget submission to OMB at the request of the budget examiner.

Checklist -- Federal credit program justification should include the following elements:

1. Program title: ________________________

2. Form of Assistance (direct or guarantee): ___________________

3. Reason this form of assistance was chosen:

4. Federal objectives of this program:

5. Reasons why Federal credit assistance is the best means to achieve these objectives:

6. Any draft bill establishing a credit program should contain the following:

   - o Authorization to extend direct loans or make loan guarantees subject to the requirements of the Federal Credit Reform Act of 1990.

   - o Authorization and requirement for a subsidy appropriation.

- Cap on volume of obligations or commitments.

- Terms and conditions defined sufficiently and precisely enough to estimate subsidy rate. (State estimated subsidy of this program (rate and dollar amount).)

- Authorization of administrative expenses.

7. Describe briefly the existing and potential private sources of credit (and type of institution):

8. Explain reasons why private sources of financing and their terms and conditions must be supplemented and subsidized, including:

   - to correct a capital market imperfection,
   - to subsidize borrowers or other beneficiaries, and/or
   - to encourage certain activities.

9. State reasons why a federal credit subsidy is the most efficient way of providing assistance, how it provides assistance in overcoming market imperfections, and how it redresses inadequate private financing.

10. Summarize briefly the benefits expected from the program. Can the value of these benefits (or some of these benefits) be estimated in dollar terms? If so, state the estimate of their value. Further information on conducting cost-benefit analysis can be found in OMB Circular No. A-94.

11. Describe the methods used to evaluate the program and the results of evaluations that have been made.

12. Describe any elements of program design which encourage and supplement private lending activity, such that private lending is displaced to the smallest degree possible by agency programs.

13. Estimate the expected administrative (including origination, servicing, and collection) costs of the credit program (dollar amounts over next 5 fiscal years).

14. Prohibitions:

- o Agencies will not guarantee federally tax-exempt obligations directly or indirectly.

- Agencies will not subordinate direct loans to tax-exempt obligations.

15. Financial standards:

Risk sharing:

- Lenders and borrowers share a substantial stake in full repayment according to the loan contract.

- Private lenders who extend Government guaranteed credit bear at least 20 percent of the loss from any default.

- Borrowers deemed to pose less of a risk receive a lower guarantee as a percentage of the total loan amount.

- Borrowers have an equity interest in any asset being financed by the credit assistance.

Fees and interest rates:

- Interest and fees cover, or at least are proportional to, default and other costs, including administrative expenses.

- Interest rates charged to borrowers (or interest supplements) not set at an absolute level, but instead set by reference to the rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed.

Protecting the Government's interest:

- Contractual agreements include all covenants and restrictions (e.g., liability insurance) necessary to protect the Federal Government's interest.

- Maturities on loans shorter than the estimated useful economic life of any assets financed.

- The Government's claims on assets not subordinated to the claim of other lenders in the case of a borrower's default.

- Loan contracts to be standardized and private sector documents used to the extent possible.

Appendix C to Circular No. A-129

Model Bill Language for Credit Programs

A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, this Act may be cited as "   ".

AUTHORIZATION

Sec. 2. (1) The Administrator is authorized to make or guarantee loans to . . . (Define eligible applicants).

(2) There are authorized to be appropriated $____________ for the cost of direct loan obligations or loan guarantee commitments authorized in subsection (1) for each of the fiscal years . . . (List fiscal years for which authorization applies).

TERMS AND CONDITIONS

Sec. 3. Loans made or guaranteed under this Act will be on such terms and conditions as the Administrator may prescribe, except that:

(1) The Administrator will allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing a credit subsidy and a credit subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(2) Loans made or guaranteed will provide for complete amortization within a period not to exceed ____ years, or ____ percent of the useful life of any physical asset to be financed by the loan, whichever is less as determined by the Administrator.

(3) No loan made or guaranteed to any one borrower will exceed ____ percent of the cost of the activity to be financed, or $ ___, whichever is less, as determined by the Administrator.

(4) No loan guaranteed to any one borrower will exceed 80% of the outstanding principal on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a

percentage of the loan amount.

(5) No loan made or guaranteed will be subordinated to another debt contracted by the borrower or to any other claims against the borrower.

(6) No loan will be guaranteed unless the Administrator determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(7) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

(8) Direct loans and interest supplements on guaranteed loans will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. The minimum interest rate of these

loans will be (at) (____ percent above) (no more than ____ percent below) the interest rate of the benchmark financial instrument.

(9) The minimum interest rate of new loans will be adjusted every month(s) (weeks) (days) to take account of changes in the interest rate of the benchmark financial instrument.

(10) Any securities of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, and that are 100 percent guaranteed by the program shall be financed through the Department of the Treasury as direct loans, attributable to the agency.

(11) Fees or premiums for loan guarantee or insurance coverage will be assessed by reference to the cost to the Government of such coverage. The minimum guarantee fee or insurance premium will be (at) (no more than ____ percent below) the level sufficient to cover the agency's costs for administering loan guarantees and paying all of the estimated costs to the Government of the expected default claims and other obligations. Loan guarantee fees will be reviewed every ____ month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most

recent estimates of its costs.

(12) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualifies for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

(13) The Administrator will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans. The Administrator must find that there is a reasonable assurance of repayment before extending credit assistance.

(14) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

(15) Within the resources and authority available, gross obligations for the principal amount of direct loans offered by the Administrator will not exceed $______, or the amount specified

in appropriations acts in each of fiscal years, . . . (List fiscal years for which authorization applies). Commitments to guarantee loans may be made by the Administrator only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $______, or the amount specified in appropriations acts in each of fiscal years, . . . (List fiscal years for which authorization applies).

Payment Of Losses

Sec. 4(a). If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Administrator may require, the Administrator determines that the holder has suffered a loss, the Administrator will pay to such holder ___ percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Administrator will be subrogated to all the rights of the recipient of the payment. The Administrator will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this Act.

(b) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(c) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Administrator, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990 is available.

(d) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Administrator will have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by him pursuant to the provisions of this Act.

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